

UNITED STATES DISTRICT COURT

for the

Western District of New York

In the Matter of the Seizure of)
 (Briefly describe the property to be seized))
 Contents contained within Coinbase Inc., Account)
 516bf54c9ffe577aa9000019)

Case No. 15-mc-71

**APPLICATION FOR A WARRANT
 TO SEIZE PROPERTY SUBJECT TO FORFEITURE**

I, a federal law enforcement officer or attorney for the government, request a seizure warrant and state under penalty of perjury that I have reason to believe that the following property in the Western District of New York is subject to forfeiture to the United States of America under 21 U.S.C. § 881 (describe the property):

Contents contained within Coinbase Inc., Account 516bf54c9ffe577aa9000019

The application is based on these facts:

The currency subject to seizure and forfeiture pursuant to Title 21, United States Code, Section 881(6) for a violation of Title 21, United States Code, Sections 841 and 846. The facts to support a finding of probable cause for issuance of the seizure warrant are set forth in the attached affidavit.

☒ Continued on the attached sheet.

Applicant's signature

Brad A. Brechler, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

11/10/15

Judge's signature

City and state: Buffalo, New York

Hon. Jeremiah J. McCarthy, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF SEIZURE WARRANT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, Brad A. Brechler, being duly sworn, deposes and states as follows:

INTRODUCTION

1. I have been employed as a Special Agent with Homeland Security Investigations ("HSI"), within the Department of Homeland Security ("DHS") since October 2009. As a Special Agent, I am a federal law enforcement officer within the meaning of Rule 41(a) of the Federal Rules of Criminal Procedure, that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Title 18, United States Code, Section 1956, et seq. and Title 18, United States Code, Section 1960, et seq. As part of my employment with HSI, I successfully completed the Federal Law Enforcement Training Center's Criminal Investigator Training Program and the Immigration and Customs Enforcement Basic School, both of which included intensive instruction with regard to Customs laws, financial crimes and drug enforcement, including the application for, and execution of, search and arrest warrants, as well as the application for criminal complaints, and other legal process. I am currently assigned to the Border Enforcement Security Taskforce (BEST) team, (hereinafter "HSI Buffalo BEST").

2. During my law enforcement career, I have participated in numerous cases involving the distribution of narcotics. I have participated in successful investigations into illicit drug distribution networks. I am familiar with how controlled substances are obtained, diluted, packaged, distributed, sold and used within the framework of drug trafficking and how drug traffickers use their persons and personal property to facilitate their illegal activities.

3. I have personally participated in the money laundering and unlicensed money transmitter investigation set forth below. I am familiar with the facts and circumstances of the investigation through my personal participation; from discussions with other agents of HSI and other law enforcement officials; from discussions with witnesses involved in the investigation; and from my review of records and reports relating to the investigation. Unless otherwise noted, wherever in this affidavit I assert that a statement was made, the information was provided by an HSI agent, law enforcement officer, or witness who may have had either direct or hearsay knowledge of that statement and to whom I or others have spoken or whose reports I have read and reviewed. Such statements are among statements made by others and are stated in substance and in part unless otherwise indicated. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts learned through my investigation.

OVERVIEW

4. I make this Affidavit in support of an Application for a Seizure Warrant pursuant to Title 21, United States Code, Sections 881(a)(6) for the contents

contained within Coinbase Inc., Account 516bf54c9ffe577aa9000019 (hereinafter referred to as the Subject Account), containing 7.80001238 bitcoins¹ belonging to Nicholas BIES. I state that there is probable cause to believe that Nicholas BIES used or intended to use the contents contained within the Subject Account in order to transport or facilitate the transportation, sale, receipt, possession, or concealment of controlled substances was used to store and transport the proceeds from the sale of said controlled substances; and represents proceeds traceable to an exchange of controlled substances, of all in violation of Title 21, United States Code, Sections 841 and 846. Property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in Title 21, United States Code, Section 881(b) as the Court has jurisdiction to enter such orders and issue seizure warrants pursuant to Title 28, United States Code, Section 1355(b)(1)(A) and (d).

BITCOIN BACKGROUND

5. Based on my experience in my duties as a law enforcement officer and in this investigation, I know the following about Bitcoin:

a. Bitcoin is a virtual currency, existing entirely on the Internet and not in any physical form. The currency is not issued by any government, bank, or company, but rather is generated and controlled automatically through computer software operation on a

¹ Since Bitcoin is both a currency and a protocol, capitalization differs. Accepted practice is to use "Bitcoin" (singular with an upper case letter B) to label the protocol, software, and community, and "bitcoin" or "bitcoins" (with a lower case b) to label units of the currency and that practice is adopted here.

decentralized, “peer-to-peer”² network. Bitcoin transactions are recorded on what is called the block chain³. This is a distributed public ledger that keeps track of all Bitcoin transactions. The block chain records every transaction and all the known balances for each Bitcoin address. It is also possible to “mine”⁴ bitcoin by verifying other users’ transactions. Bitcoin is just one form of digital currency, and there are a number of other varieties of digital currency.

b. To acquire bitcoins, a user typically must purchase them from a Bitcoin exchanger. Bitcoin exchangers typically accept payments of fiat currency (currency which derives its value from government regulation or law), or other convertible virtual currencies in order to obtain bitcoins. A user will normally send or provide payment in the form of fiat or other convertible virtual currency to an exchanger, usually via wire or an Automated Clearing House (“ACH”) (ACH is an electronic network for financial transactions in the United States), for the corresponding number of bitcoins based on a fluctuating exchange rate. The exchanger, often for a commission, will attempt to broker the purchase with another user on the exchange that is trying to sell bitcoins.

² Peer-to-peer (P2P) is a decentralized communications model in which each party has the same capabilities and either party can initiate a communication session. Unlike the client/server model, in which the client makes a service request and the server fulfills the request, the P2P network model allows each node to function as both a client and server.

³ The block chain is a shared public ledger on which the entire Bitcoin network relies. All confirmed transactions are included in the block chain. This way, Bitcoin wallets can calculate their spendable balance and new transactions can be verified to be spending bitcoins that are actually owned by the spender. The integrity and the chronological order of the block chain are enforced with cryptography.

⁴ Bitcoin mining is the process by which transactions are verified and added to the public ledger, known as the block chain, and also the means through which new bitcoin are released. Individuals who run the algorithms to set up each new block in the chain are known as “miners.”

c. In order for a user to acquire bitcoins, they must be sent to the user's Bitcoin address. This address is somewhat analogous to a bank account number, which is designated by a complex string of letters and numbers. The user can then conduct transactions with other Bitcoin users, by transferring bitcoins to their Bitcoin addresses, via the Internet.

d. Little to no personally identifiable information about the payer or payee is transmitted in a Bitcoin transaction. Only the Bitcoin addresses of the parties are needed for the transaction, which by themselves do not reveal any identifying information.

e. Bitcoin is not inherently illegal and has known legitimate uses, much like cash; bitcoins, however, are also used to facilitate illicit transactions and to launder criminal proceeds, given the ease with which they can be used anonymously, again like cash.

f. An example of a legitimate online Bitcoin exchange company is Coinbase. Coinbase is based out of San Francisco, CA and operates exchanges between bitcoin and fiat currencies in twenty-six countries, and bitcoin transactions and storage in 190 countries worldwide. Bitcoin exchanges can be funded through a bank transfer or wire, and trades on the exchange have a maker/taker price model in which traders pay either a 0.25% fee (taker) or nothing (maker) to execute trades.

BACKGROUND OF DARK WEB MARKETPLACES

6. The World Wide Web is divided between the Surface Web and Deep Web. The Surface Web (also called the Visible Web, Clearnet, Indexed Web, Indexable Web) is that portion of the World Wide Web that is readily available to the general public and searchable with standard web search engines (Google, Yahoo, etc.). The Deep Web, which contains the Dark Web, is the content on the World Wide Web that is not indexed by standard search engines. The Dark Web is classified as a small portion of the Deep Web that has been intentionally hidden and is inaccessible through standard web browsers. The most famous content that resides on the Dark Web is found in the TOR network.

7. The TOR network is an anonymous network that can only be accessed with a special web browser, called the TOR browser. TOR stands for "The Onion Router," a reference to the many layers in an onion. This is the portion of the World Wide Web most widely known for illicit activities because of the anonymity associated with the TOR network. The vast majority of goods for sale on Dark Web Marketplaces consist of illegal drugs, of nearly ever variety, openly advertised on the site and prominently visible. In addition to illegal drugs, Dark Web Marketplaces openly advertise child pornography, identity documents, firearms, and other contraband or regulated products. Silk Road, Silk Road 2.0, Evolution, Agora, and Nucleus are examples of Dark Web Marketplaces websites known to law enforcement that openly market illicit goods and activities. When initially accessing Dark Web Marketplaces, a new user often needs a referral link from a known user. This referral provides some credibility to the new user. Bitcoin is the most common and widely accepted form of payment for illicit activities on Dark Web Marketplaces.

PROBABLE CAUSE

8. On June 26, 2015, at Chicago Customs and Border Protection (CBP) International Mail Branch (IMB) while screening mail from the Netherlands, CBP K-9 “Kajo” alerted to a padded envelope, (hereinafter referred to as envelope #1) containing a brownish crystal-like powder that field tested positive for the properties of MDMA (Ecstasy)⁵. The 67 grams of MDMA was seized by CBP per policy. The addressee on envelope #1 was Nicholas BIES, 3843 Union Rd Suite 15 #267, Cheektowaga, NY 14225.

9. On June 25, 2015 Chicago CBP IMB, while screening mail from the Netherlands, CBP K-9 Hannah alerted to a padded envelope (hereinafter referred to as envelope #2) ultimately containing 107 pills that were seized as ecstasy. The 107 ecstasy pills were seized by CBP per policy. The addressee on envelope #2 was Nicholas BIES, 3843 Union Rd Suite 15 #267, Cheektowaga, NY 14225.

10. I reviewed law enforcement records and they show BIES was the addressee of a padded mailer (hereinafter referred to as envelope #3) that was seized in Chicago on December 5, 2014, that contained 10 tablets that field tested positive, for properties of MDMA (Ecstasy). The addressee on envelope #3 was Nicholas BIES, 3843 Union Rd Suite 15 #267, Cheektowaga, NY 14225.

11. 3843 Union Rd Suite 15 #267, Cheektowaga, NY 14225 is the UPS Store, #3671. On June 29, 2015, I received the UPS Store mailbox service agreement for mailbox

⁵ MDMA (Ecstasy) is known as 3,4-Methylenedioxymethamphetamine which is listed in the Schedules of Controlled Substances under Title 21 Code of Federal Regulations Section 1308.11 Schedule I, subsection (d)(11).

#267, stating that BIES opened the account on October 30, 2013 and provided a copy of his New York State driver licenses as identification when opening it.

12. On July 1, 2015, law enforcement officers arranged for a controlled delivery of envelope #1 to Nicholas BIES, 3843 Union Rd Suite 15 #267, Cheektowaga, NY 14225. During controlled delivery, law enforcement officers observed BIES arrive at the UPS Store, retrieve envelope #1 and depart the store. Upon departing the store BIES was taken into custody by Cheektowaga Police Department (CPD) and transported to the CPD station for further questioning.

13. During a post-Miranda interview BIES verbally stated the following information:

- a. MDMA was in the package.
- b. The MDMA was purchased online via a forum called Nucleus, from vendor⁶ name MEYER LANSKY.
- c. Bitcoins paid for the MDMA purchased through BIES' Coinbase, Inc. account. BIES' stated his Coinbase account is linked to his Citizens Bank checking account.
- d. This was the second package of MDMA he received from MEYER LANSKY.
- e. BIES dissolves the MDMA on his tongue and that dosage unit is 300-400 milligrams.
- f. No other packages were due to arrive ordered by BIES, containing illegal substances⁷.

⁶ "Vendor" is a term known by law enforcement used when referring to the illicit goods distributor located on Dark Web Marketplaces.

⁷ The seizures referenced in Paragraphs 8 & 9 shows that BIES was minimizing his involvement with the use of his Coinbase account and his illegal purchases and thus not completely truthful with regards to the amount of illegal substances he has ordered, specifically MDMA and ecstasy.

14. On July 2, 2015, SA Brechler received Coinbase, Inc. subpoena results, regarding Coinbase.com account records for the Subject Account. The results show that Nicholas BIES opened the Subject Account on April 15, 2013 using the following pedigree information:

Nicholas BIES (12/18/1979)
SS# 076-70-2935
E-mail address: metalplait@roadrunner.com
Phone number: (716) 465-9978
Address, 212 Diane Drive, Cheektowaga, NY 14225

15. Since the inception of the Subject Account BIES has purchased 95.46932238 bitcoins directly from Coinbase at a value of \$23,978.79. Upon buying/receiving bitcoins into his account, BIES would normally then send the bitcoins out to a different Bitcoin address. Records show that BIES never sold Bitcoin on Coinbase, only that he bought bitcoins and then sent bitcoins to other Bitcoin addresses.

16. On July 2, 2015, BIES was arrested by Cheektowaga Police Department) and charged with violation of New York State Penal Law 220.18, Criminal Possession of hallucinogenic substance 2nd degree, a class A-II felony. In October 2015 BIES plead guilty to New York State Penal Law 220.03, Criminal Possession of a Controlled Substance 7th degree.

17. The Subject Account, on July 2, 2015 contained 7.80001238 bitcoins. On October 27, 2015, I received notification from Coinbase that the Subject Account maintains the balance of 7.80001238 bitcoins.

APPLICABLE STATUTES

18. Title 21 United States Code, Section 881(a) provides as follows:

The following shall be subject to forfeiture to the United States and no property right shall exist in them: (6) All moneys, negotiable instruments, securities, or *other things of value* furnished or *intended to be furnished* by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or *intended to be used to facilitate* any violation of this subchapter.

(emphasis added).

19. Title 21, United States Code, Section 881(b) entitled "Seizure procedures" provides that "Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of Title 18."

REQUEST FOR TERMS OF SEIZURE

20. The United States believes that a seizure warrant order authorizing the immediate liquidation of the virtual currency upon seizure by HSI is the only means by which the property held by COINBASE can be preserved for forfeiture and represent an accurate value for the property during the pendency of the forfeiture proceeding. Retaining virtual currency in its electronic form during the pendency of a forfeiture proceeding and delaying liquidation does not secure this property for forfeiture. Your affiant believes that the retention of virtual currency in its electronic form leaves the property extremely

susceptible to theft by hackers and other cyber criminals. Failure to enter this Order could result in the property being destroyed, removed from the jurisdiction of the court, subject to tampering or alteration, or otherwise made unavailable for forfeiture. The lack of current regulation and control of virtual currency systems – in particular, decentralized virtual currency systems administered by users world-wide – exacerbates this issue. Additionally, the value of virtual currency can fluctuate greatly on a minute-by-minute basis and depends entirely on the perceived market value given by its users – i.e., the supply and demand of the virtual currency system. These factors, taken together, demonstrate the need for an order issued by the court authorizing immediate liquidation of the virtual currency. The only secure means to guarantee that the property is present for forfeiture is to liquidate and hold its substitute res in U.S. dollars. Further, the need of the United States to preserve this property for forfeiture outweighs any hardship on the party from whom it was seized.

21. The United States is requesting authorization to proceed with a public sale of the above-listed property. Based on the reasons set forth herein, the United States believes that an immediate sale of the property affords the best protection to the government and all potential claimants. Such sale shall be conducted through the use of a licensed virtual currency exchanger, or any commercially reasonable means, or as otherwise authorized by the court. Such sale shall be upon such terms and conditions as the court directs and, by virtue of utilizing a licensed virtual currency exchanger, the sale will be available to the public. This method will protect both the government and BIES's interest. If the property is ultimately forfeited, then the government will deposit the cash equivalent of the bitcoins into the

Assets Forfeiture Fund. If the property is not forfeited, but returned to BIES, then the cash equivalent of the bitcoins can be issued to the claimant.

22. For the reasons stated above, the United States respectfully requests that the court issue a seizure warrant for the contents of the Coinbase account and provide an order directing Coinbase to transfer the subject bitcoins to a secure wallet account held by United States Department of Homeland Security. United States Department of Homeland Security will then execute an immediate sale of the property through a licensed virtual currency exchanger based on the terms and conditions set forth in the proposed order submitted herewith.

CONCLUSION

23. Based on this investigation, your affiant submits there is probable cause to believe that the contents contained within the Subject Account, were intended to be used to purchase controlled substances, to wit: MDMA; and represents proceeds traceable to an exchange of Schedule I controlled substance; as defined in Subchapter I of Chapter 13 of Title 21 of the United States Code and is, therefore, subject to forfeiture to the United States pursuant to Title 21, United States Code, Section 881(a)(6).

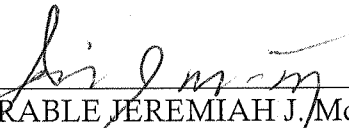
24. Wherefore it is respectfully requested that the Court grant the Government's application for the Seizure Warrant as described herein and issue a seizure warrant directing the seizure of 7.80001238 bitcoins contained within Coinbase Inc. account 516bf54c9ffe577aa9000019.



BRAD BRECHLER
Special Agent
Homeland Security Investigations

Subscribed and sworn to before

me this 10TH day of November, 2015



HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE